

1 general revenue level every few months or so. Is that
2 correct?

3 A Yes.

4 Q But is it not true that you already have a pretty
5 good sense of where things are?

6 A Sure.

7 Q Why is that?

8 A Because I see what happens, I see radio sales, and
9 I have a sense of what his business is doing. I turn the
10 customers on so if there a lot of new customers, then I know
11 something is going on.

12 Q So, let me understand the process. When Mr. Kay
13 or his company sells a repeater service contract, and the
14 decision is made that this is a customer who is going to be
15 put on one of your stations, you don't necessarily in every
16 case review that contract, or do you?

17 A No. A contract is standardized. It's a form.

18 Q It is a contract form. You are familiar with it?

19 A Yes.

20 Q But does the customer get activated on your
21 repeater without your knowledge?

22 A No.

23 Q Why is that?

24 A I turn them on.

25 Q You are the one that turns them on. You have

1 already testified this morning about the process of turning
2 on and off customers, so I won't go through that. Describe
3 to me what the typical repeater site is like, in your area,
4 the Los Angeles area.

5 A Usually the sites can be anything from a steel
6 container, that basically there is a cement pad, you put the
7 container down, and erect a tower to a block building the
8 size of this room. There are some really large sites that
9 might be twice this big.

10 Inside the building, it is pretty basic. It is
11 rows of equipment racks and rows of repeaters. The old
12 fashioned repeaters are usually stacked one on top of
13 another and take up a great deal of space. The repeaters
14 that I use tend to be the smaller type, lighter size,
15 compact repeaters so you can get more repeaters in the same
16 space.

17 Q This building in which the repeaters are held,
18 what kind of security is there typically?

19 A They are locked. Many of them have alarm systems.
20 Access is gained through forestry off-road travel. Some of
21 them have gates at the bottom of the roads, some don't.
22 They are all locked and keyed. The cabinets themselves are
23 locked and keyed as well.

24 Q So if I just decided to drive up to one of these
25 repeater sites, without doing something unlawful, I would be

1 able to gain access?

2 A No.

3 Q What is involved in gaining access to a repeater
4 site?

5 A Having the keys to go up there and the knowledge
6 of where the repeaters are.

7 Q You have access to all the repeater sites for
8 which you have licenses?

9 A Yes.

10 Q It is unrestricted access?

11 A Yes.

12 Q You did not need to get permission from Mr. Kay to
13 go into any of your repeater sites?

14 A No.

15 Q In your industry, you mentioned several times this
16 morning about resale, but you also said something about
17 spectrum capacity or channel capacity. I guess I understand
18 part of the business is that I put up a repeater and I go
19 out and sell service to individual customers. Is that
20 right? So I go to a taxi customer and I might sell them
21 three or four radios. Is that one way it works?

22 A Yes.

23 Q But there is another version of that. Explain the
24 resale of channel capacity aspect of your business.

25 A There are a lot of radio dealers in southern

1 California that do not own repeaters. Their method of
2 selling a radio is to sell a radio to an end user, a
3 customer, service that radio, take care of the installation
4 of the radio with that client, contact somebody who owns a
5 repeater, and cut a deal with them to provide that customer
6 service. The deal can be done in several ways.

7 It's common in both ways that either the repeater
8 owner bills the customer directly and then pays a commission
9 to the radio dealer on a one time basis, or they could bill
10 a customer directly and pay the radio dealer a recurring
11 revenue.

12 Q So in the latter, they can bill the dealer, the
13 non-licensee can bill the customer directly and then pay the
14 licensee a fee?

15 A Yes.

16 Q So in that case, in a sense, the dealer, the
17 person who is out there dealing with the public, is in
18 effect leasing the capacity from the licensee?

19 A Yes. He becomes the reseller of the capacity.
20 It's not different from what the cellular people do, the
21 pager people, it's extremely common.

22 Q Do you take pager service yourself?

23 A Yes.

24 Q Who is your pager dealer?

25 A A company called PR Products.

1 Q To your knowledge, do they have a paging license?

2 A No.

3 Q So it is common in the mobile radio industry that
4 licensees sometimes just have the license and sell the
5 capacity and then somebody else actually goes out and sells
6 the service to the public?

7 A That's correct. There are several radio dealers
8 in southern California that do not sell radios.

9 Q In those situations, and you have been involved in
10 this industry for 20 years now, is there a common
11 understanding as to who those customer contracts belong to
12 in those situations?

13 A Generally speaking, the customer contracts belong
14 to the person who made the contact with the customer, which
15 would be the radio dealer. The radio dealer keeps and
16 maintains that relationship with the customer. The repeater
17 owner or operator does not always have that contract. It
18 can be done both ways. It's common in both instances, that
19 the contract would be between the repeater owner and the
20 customer.

21 When it's done that way, the radio dealer tends to
22 make a little more money.

23 Q In which way?

24 A Where the contract is between the repeater owner
25 and the radio customer.

1 Q All right. Now, are you familiar with the
2 concepts of clear channel and encumbered channel?

3 A Yes.

4 Q Can you define or describe what both of those mean
5 in this context?

6 A The rules provide that a frequency is to be
7 shared, and the sharing is based upon the given location of
8 the repeater used and a certain area of miles, radius of
9 miles around the repeater, that has a certain protection so
10 that, for example, if the repeater is on a mountaintop, that
11 repeater would have protection for 70 radios at a 40 mile
12 radius. Another repeater owner, another company, any other
13 entity, could not put a repeater in the same location within
14 that radius and mobiles to exceed that number of 70 radios.
15 That is just one example.

16 They could, however, do this if the first guy
17 didn't have all 70 radios. In that case, the frequency
18 would be shared. Between the two of them, the rules would
19 provide that the given location may not exceed a certain
20 number of radios. The rules don't say you can't have 10
21 repeaters, as long as the 10 repeaters have no more than
22 seven customers.

23 Q In other radio services that are licensed by the
24 FCC, do you understand that the channels are licensed
25 initially on an exclusive basis, do you not?

1 A Yes.

2 Q So, for instance, if I have a license for
3 television channel 4 in Los Angeles, nobody else can get
4 another license for television channel 4 within a reasonable
5 distance?

6 A That's my understanding.

7 Q Similarly with cellular licenses?

8 A Yes.

9 Q With most common carrier paging licenses?

10 A Yes.

11 Q But that's not what you are describing here with
12 some of these repeater licenses?

13 A No. It's different in our industry. We have to
14 share.

15 Q Would you say that most of your licenses are of
16 this type, or the type that potentially could be shared with
17 other licensees in the same area?

18 A Yes.

19 Q How many licensees might there be on a given
20 channel?

21 A Typically, it's just a handful. Years ago, there
22 were a lot. There could have been 10 or 15 licenses.

23 Q But even with a handful, we're talking about still
24 potentially more than two or three?

25 A Yes.

1 Q Apart from the obvious factor, the operational
2 fact of not having co-channel interference and channel
3 congestion, to your knowledge and understanding, are there
4 other advantages to having a clear channel? Let me back up
5 and make sure I understood your testimony. I mean clear
6 channel to mean one on which there are no other licensees.

7 A That's correct. A clear channel would be one
8 where there are no other, as well call it, co-channel
9 licensees within that area of protection according to the
10 rules. If you have a clear channel, you can then operate in
11 an enhanced mode to either marry your radio with another
12 frequency, you don't have to monitor for other users, you
13 can use your radio -- there's a format that the radios use
14 to provide the user an exclusive non-interference based
15 operation where the other, even though they are your own
16 customers, can't interfere with your own customer's
17 operation.

18 So, in essence, you can raise more money on that
19 channel and provide a more efficient communications system,
20 but only if you have a clear channel.

21 Q Are clear channels more valuable than
22 encumbered channels?

23 A Certainly.

24 Q Significantly more?

25 A Yes.

1 Q What is the process involved in clearing a
2 channel? Let's suppose I have a channel, I have a license,
3 and there are half a dozen or more other licensees on paper
4 or in reality out there. What types of processes does one
5 go through to get a clear channel?

6 A Usually it's an expensive and time consuming
7 process of contacting each one of the licensees, looking at
8 the database, determining who they are, where they are.
9 Generally, what I do is try to find out whether or not they
10 are still in business. The licenses are issued for five
11 years. Businesses don't often last five years. Where they
12 do go out of business, and the license is still there, the
13 Commission's rules provide that if the station is not
14 operating for a year, the license shall automatically
15 cancel.

16 However, the Commission doesn't go out chasing
17 dead stations unless you ask them to. So, the process is
18 that we ask them to when we find a dead station and provide
19 information that the license should be canceled.

20 Q Is that one of the purposes of these finder's
21 preference requests that you have for the FCC?

22 A Yes. The finder's preference does one thing for
23 us. Where it used to be, before the finder's preference
24 program is that should I find a station after spending time
25 and effort and find a dead station, I would inform the

1 Commission, and the Commission would cancel. The license is
2 then up for grabs for anybody to grab it first.

3 Now, since the Commission recognized that we spent
4 a lot of time and effort on it, they started a program
5 called finder's preference and they allow that if we gave
6 the Commission the adequate reasons for the need to cancel a
7 license, the Commission would send us a letter stating that
8 we had first crack at the license for a period of time and
9 we can, therefore, apply for the license.

10 Q So your interpretation of that policy is then that
11 the Commission recognizes that there is some significant
12 value to the work done in finding and clearing these dead
13 stations?

14 A Sure. We did their work for them, in essence.

15 Q Now, in the process, you may also discover
16 licenses that are not dead, but I presume there would also
17 be co-channel licensees who are using the frequencies?

18 A That's correct.

19 Q What sorts of things are done about that if your
20 goal is to have a clear channel?

21 A Oftentimes we found people that had very old
22 radios, 10 or 15 year old radios, first generation
23 communications equipment. There was a need for repair.
24 They may or may not have been happy with the operation of
25 their radio, and what we would try to do would be then to

1 offer them brand new radios, used radios, or even just out
2 and out buy their system from them and when we were
3 successful, part of the agreement was to relinquish their
4 license.

5 We would either ask for a cancellation of their
6 license outright, or we would ask for assignment of the
7 license.

8 Q Now, sometimes the action involved purchasing the
9 license, and sometimes it might simply be a consideration
10 for the repeater service that you are going to sign them up
11 for?

12 A Yes. We also made them a deal on the repeater
13 service. Sometimes we even gave them six months free or one
14 year free repeater service for the trade.

15 Q So if I am to understand, I want to make sure,
16 there is a lot of time, work, and potentially a lot of money
17 involved in clearing a channel then?

18 A Yes.

19 Q With respect to your 800 megahertz stations that
20 are subject to the Management Agreement, that we are calling
21 the Management Agreement stations, do you have a
22 recollection as to whether or not those applications, when
23 you applied for them, whether these channels were encumbered
24 or clear?

25 A I believe all my applications, the first ones,

1 were encumbered.

2 Q How many hours a week do you spend on the various
3 aspects of your business?

4 A Probably anywhere from 30 to 60 hours.

5 Q So is it safe to say that you didn't feel that you
6 had the time or the money to spend on the full scale effort
7 to clear these channels?

8 A That's correct, and that's why I cut a deal with
9 James Kay.

10 Q Did he also have the knowledge and capabilities in
11 this regard?

12 A I believe he was capable of doing it. He had the
13 staff and employees.

14 Q Did you know of his history of this in the past?

15 A Yes.

16 Q What was your knowledge of that?

17 A Well, he was always successful.

18 Q So part of the understanding, then, was that he
19 would undertake that task as well?

20 A Yes.

21 Q Now, this then involved filing various
22 applications with the FCC, did it not?

23 A Yes.

24 Q So you would have to file modification
25 applications, assignment applications, and cancellations in

1 order to take advantage of the enhancements that you
2 gradually in time became entitled to?

3 A Yes.

4 Q About what time did you first notice that your
5 application processing had sort of dried up with the FCC?
6 There was some sort of an undisclosed or unwritten hold on
7 your applications?

8 MR. SCHAUBLE: Objection on relevance, again, Your
9 Honor. I have been listening for a while, but now I don't
10 see where this goes at all to the designated transfer of
11 control or misrepresentation.

12 MR. KELLER: Your Honor, where it goes to, there
13 has been a lot of point made to the Bureau's case and
14 arguments about the value of these stations to Mr. Sobel.
15 Were they worth \$500.00, were they not, were they making
16 money, why aren't they making money, did you ever get any
17 money? It is our position, and I don't think it is any
18 secret, the current value of these stations is nowhere near
19 what Mr. Sobel initially anticipated that they would be, and
20 in large part, that is due to inability to get further FCC
21 modifications and finder's preferences.

22 JUDGE FRYSIK: My recollection is that the Bureau
23 used the witness's formula in ascertaining the value placed
24 on the station.

25 MR. KELLER: That's not entirely accurate either.

1 That may be what they've used, but that is not -- I don't
2 think we placed a value on these stations specifically.

3 MR. SCHAUBLE: I think there is information in the
4 record as to what would constitute -- Mr. Sobel testified
5 three times gross revenues.

6 JUDGE FRYSIK: That is my recollection, yes.
7 Maybe we should go back over that, because I don't think
8 that testimony was quite accurate.

9 MR. KELLER: I will leave this line of questioning
10 for a moment, just to pick up on that and maybe clarify
11 that.

12 BY MR. SCHAUBLE:

13 Q Mr. Sobel, would you turn to Wireless
14 Telecommunications Bureau Exhibit 47?

15 JUDGE FRYSIK: Did you say 37?

16 MR. KELLER: Exhibit 47, Your Honor. This is the
17 agreement to purchase assets of AirWave Communications.

18 BY MR. KELLER:

19 Q Mr. Sobel, does this exhibit relate exclusively to
20 your Management Agreement stations?

21 A No.

22 Q Does it, in your understanding, relate primarily
23 to your Management Agreement stations?

24 A They weren't making any money at the time this
25 agreement, or I should say, I wasn't realizing anything over

1 the \$600.00 when this agreement was written, so from my
2 point of view, the gross valuation was based upon my UHF
3 radio systems versus my 800 systems.

4 Q So, the \$200,000.00 was a price that, at that
5 time, was the value of your going business.

6 A Right.

7 Q Your overall going repeater business, not
8 exclusively the 800 megahertz repeaters?

9 A That's correct.

10 Q In fact, correct me if I'm wrong, but if you
11 wanted to read the literal terms of the written Management
12 Agreement, as to the managed stations, Jim could just
13 exercise an option and purchase those for \$500.00, could he
14 not?

15 A Yes, he could.

16 Q Also, if you look at paragraph three, where it
17 talks about the \$200,000.00, the next sentence, read the
18 next sentence for me.

19 A "However, the valuation of the business may
20 fluctuate from time to time and shall be valued for sale at
21 the time of sale at three times the gross repeater service
22 income for the 12 months prior to the month in which the
23 date of death occurs."

24 Q So the three times gross revenues were simply a
25 way of dealing with changes that may or may not occur in the

1 future?

2 A Yes, we didn't want to go modifying this agreement
3 every whatever. This is kind of a perpetual thing, and it
4 provided that a number would be derived at the time of
5 death.

6 Q Do you believe that it is possible to place a
7 generic value and uniform figure on the value of a repeater?

8 A Obviously, we have to value it one way or the
9 other, but every repeater is different. Every situation
10 surrounding a repeater is different. There is valuation
11 equipment, valuation of whether or not if they are your
12 customers, and there is valuation as to what the frequency
13 is worth. There is not a generic way of doing it.

14 Q So, when you came up with a number here, this was
15 just a gross number?

16 A It was kind of a typical business number that
17 businesses, in my opinion, were valued.

18 Q When you say businesses, do you mean repeater
19 businesses or do you mean businesses in general?

20 A Businesses in general. If you had a taco stand
21 that derived X amount of dollars income in a year, you
22 invested your time and effort in it, it would be reasonable
23 to assume that three years gross revenue might be the
24 valuation of the business.

25 Q Your primary purpose in entering this agreement

1 was simply so that your wife wouldn't have to get involved
2 in the radio business if you died, correct?

3 A Yes. It provided my friend here would be able to
4 pay her for the value of the business, and it would make the
5 situation very easy to handle.

6 Q As a result of this agreement, he would be
7 acquiring a significant business that he currently today
8 really has no involvement in, is that not correct?

9 A That's true.

10 Q Your UHF repeater business. I don't mean to say
11 he is not involved in UHF repeater business, but in your UHF
12 repeater business.

13 A Yes.

14 Q Now, I want to back. Maybe I can make this line
15 of questioning a little better so it's a little clearer
16 where we're going here. When you first entered this
17 arrangement with Mr. Kay, it provided for the first \$600.00
18 of revenue to go to him. Revenues over \$600.00 would then
19 be split equally?

20 A That's correct.

21 Q Did you have any general expectation or
22 anticipation as to how long it would take you to realize
23 some revenue on that basis?

24 A Sure, it could have been a year or two years.

25 Q Did you expect it would be this long?

1 A No.

2 Q What is the primary reason why you think it has
3 taken this long?

4 A Because we haven't been able to finish clearing
5 channels, we have finder's preferences pending, we have
6 pointed out dead licenses to the Commission that they
7 haven't taken action upon, and I have applications pending
8 that they won't grant. They have stopped any sort of
9 expansion of my business.

10 Q So is it safe to say that you attribute to the
11 Commission processing, both the failure of the value of the
12 stations to increase both in terms of intrinsic value as
13 well as revenue potential?

14 A Yes.

15 Q I am going to now turn your attention to WTB
16 Exhibit 1. I just wanted to pick one example, a fairly
17 clean one that we can see here.

18 I am looking at what I believe to be page 18 of
19 30, I'm sure there is a page number on here, but I can't
20 find it. There it is, page 18 of 30. You don't need to
21 review this carefully at this point, I just want an example
22 of one of these.

23 First of all, what is this form?

24 A This is the FCC license application form.

25 Q Is this essentially the same type of form you used

1 in applying for your UHF repeater applications?

2 A Yes.

3 Q When you did that, you filled out the form?

4 A Yes.

5 Q So you were familiar with the process?

6 A Yes.

7 Q You are familiar with the various aspects of this
8 form?

9 A Yes.

10 Q When you entered into the arrangement with Mr.
11 Kay, however, you had an understanding that he would take
12 primary responsibility in preparing these forms in your
13 behalf?

14 A Yes.

15 Q That was because he had the software from
16 Slattery?

17 A Yes.

18 Q Were there any other reasons why it made sense for
19 him to do that?

20 A He had a template in his computer that showed the
21 locations, and he had various technical information about
22 the stations that would be necessary in filling out the
23 forms.

24 Q Did Mr. Kay, when he prepared these forms, did you
25 always review them before they were submitted to the FCC?

1 A Of course.

2 Q Was there ever a form submitted to the FCC that
3 you did not review and personally sign?

4 A No.

5 Q You have already testified that you were familiar
6 with the application process, but you were also familiar
7 with your repeaters and your proposed repeater sites and
8 what you were proposing to do. Correct?

9 A Yes.

10 Q So if there was something wrong or remiss about
11 these forms in some way, you would likely have known about
12 it and would have caught it?

13 A Yes.

14 Q In going through the various exhibits, I noticed
15 that at item 39, sometimes your name was listed and
16 sometimes Mr. Kay's name was listed as the preparer of the
17 application. Do you have any explanation for those
18 differences?

19 MR. SCHAUBLE: Excuse me. I think you are
20 referring to item 37?

21 MR. KELLER: I'm sorry. Your Honor, I should have
22 bifocals. It is item 37, I'm sorry.

23 BY MR. KELLER:

24 Q Sometimes it is Marc Sobel and sometimes it is
25 listed as James Kay. But most of the time Mr. Kay did the

1 initial preparation. Is that not correct?

2 A Together we made these applications out. Most of
3 the time, he would type the whole thing up on the computer,
4 I would review it. Sometimes I would type it up, sometimes
5 he would type part of it up and I would type the rest of it.
6 It was more a situation of convenience as to who actually
7 did the form.

8 Q What do you understand that item in the form to be
9 asking for?

10 A Not frequently, but sometimes the Commission
11 processors would have questions about something on the
12 application that didn't jive. Say you put down launch and
13 latitude coordinates and you did a typo on it, and when they
14 looked up prior application, it was referenced on the
15 application and they caught it. They would have somebody
16 call to say, what about this thing?

17 Q So it is a contact so that the FCC could call if
18 they had a question?

19 A Yes.

20 Q Did you believe at the time you submitted these
21 applications that either you or Mr. Kay would be competent
22 to field any such questions from the Bureau?

23 A Yes.

24 JUDGE FRYSIK: We are getting close to 4:00.

25 MR. KELLER: This might be a good time to stop.

1 We can just pick up in the morning.

2 JUDGE FRYSIK: all right. Let's break for the
3 day, and come back at 10:00 tomorrow morning.

4 MR. SCHAUBLE: Thank you, Your Honor.

5 MR. KELLER: Thank you, Your Honor.

6 (Whereupon, at 3:57 p.m., the hearing was
7 adjourned, to reconvene at 10:00 a.m. on Wednesday, July 30,
8 1997.)

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

REPORTER'S CERTIFICATE

FCC DOCKET NO.: WT97-56
CASE TITLE: Marc Sobel
HEARING DATE: July 29, 1997
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 7/29/97

Catherine B. Crump
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005
Catherine B. Crump

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 8-4-97

Carol J. Filas
Official Transcriber
Heritage Reporting Corporation
Carol J. Filas

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 8/6/97

Don R. Jennings
Official Proofreader
Heritage Reporting Corporation
Don R. Jennings